

*Original*  
Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING -- January 13, 1965

Appeal #8038 Citizens' Association of Georgetown, Appellant

Zoning Administrator, District of Columbia, Appellee

On motion duly made, seconded, and unanimously carried, the following Order was authorized on January 13, 1965 and entered on February 9, 1965:

ORDERED:

That in the appeal of Citizens' Association of Georgetown challenging the propriety of the decision of the Zoning Administrator given on December 1, 1964, when he issued permit No. B48962 for "Tire shop, sales, recapping, etc., and storage" to Milton Rosenberg, on the ground that the use permitted by said permit is prohibited by Sections 6101.4 and 6102.4 of the Zoning Regulations, the Zoning Administrator be sustained.

Based upon the records and the evidence adduced at the public hearing and an inspection of the subject property by the Board, the Board makes the following findings of fact:

(1) The permit was issued for premises 3121 South Street, N.W. located in a C-M-2 District. It is the contention of the appellant that Sections 6101.4 and 6102.4 (m) of the Zoning Regulations prohibits such use. Sections 6101.4 and 6102.4 in pertinent part are as follows:

"6101.4 No use specifically prohibited in an M District shall be permitted in a C-M District.

6102.4 The following uses are specifically prohibited in an M District: \*\*\*

(m) rubber products manufacture or treatment."

(2) It is the contention of the Zoning Administrator that the use authorized by the disputed certificate of occupancy is not prohibited by the foregoing regulations because such use constitutes a service-type facility first permitted in the C-2 District and is not "rubber products manufacture or treatment."

(3) In a C-M-2 District there is permitted as a matter of right such uses as experimental, research, or testing laboratories; incinerator; laundry or dry cleaning establishment; repair garage, (defined by the Zoning Regulations as a building or part thereof with facilities for the repair of motor vehicles

including body and fender repair, painting, rebuilding, reconditioning, upholstering, equipping, or other motor vehicle maintenance or repair); or any light manufacturing, processing fabricating or repair establishment. Additionally, any commercial use permitted in the C-4 District is permitted.

(4) It is the intention of the holder of the certificate of occupancy B48962 to engage in the business of recapping tires and selling and storing tires on the subject premises. The record indicates that this use was commenced at the subject premises on January 9, 1965.

(5) Milton Rosenberg, who for the past 23 years has operated the Safety Fire Company at a number of locations in the District of Columbia entered into a lease agreement on November 5, 1964, subject to securing a valid certificate of occupancy, for a period of five (5) years for the premises 3121 South Street, N.W.

(6) The words "rubber products manufacture or treatment" are not defined by the Zoning Regulations. The evidence of record provides the following dictionary definitions of the pertinent language of the Regulations:

Manufacture (Verb) 1. To make (wares, or other products) by hand, by machinery, or by other agency; as, to manufacture cloth, nails, glass, etc.; to produce by labor, esp., now, according to an organized plan and with division of labor, and usually with machinery.

Rubber (Noun) 3. From its earliest European use, the manufacture of erasers. A substance obtained from the milky juice (rubber latex) of many tropical plants, and usually characterized by its elasticity, though its properties vary widely, depending upon its source and preparation, whether it is in the crude state or whether, and with what, it has been mixed and vulcanized;

Treatment 1. Act, manner, or an instance, of treating, esp. of treating a person or animal, a patient, subject, or a substance, as in

processing; handling; usage; as, unkind treatment of a child; to require medical treatment.

Products (Noun) 1. Anything produced, as by generation, growth, labor, or thought, or by the operation of involuntary causes; as, the products of the season, or of the farm; the products of the brain; he is a finished product.

(7) The process of recapping tires involves the use of worn tire casings and the application of new rubber thereto in the form of tread. Simply described, a tire casing is first buffed so that its surface is rough and more porous. To this surface is applied a rubber cement and a strip of manufactured tread rubber. The tire casing is then placed in a mold and subjected to pressure by inflating within it an ordinary innertube and to heat by steam at approximately 300°F which circulates in the outside jacket of the mold. When this pressure and heat is maintained for a specified period of time, (the record herein indicates approximately one hour) the added rubber strip becomes permanently affixed to the used tire casing and a tread also by the use of heat at 300°F is impressed on it.

(8) In the recapping process, in addition to the mold, there is used a buffing machine which consists of a motor with attached buffer and a frame for holding the casing while it is being buffed. The particles of rubber removed from the casing by this process are collected by a mechanical exhaust system. A smaller piece of equipment is also used when the new rubber is applied to the casing with rubber cement. This apparatus is operated by a smaller motor which turns the tire casing slowly while the new rubber is applied.

(9) In the tire recapping process, as above described, no raw rubber or other raw material is used and no new product is treated or manufactured. Further, there are no unusual levels of sound generated by the equipment, no smoke is emitted therefrom and no noxious, toxic or corrosive fumes or gasses are discharged. The testimony of one witness was to the effect that this process was performed as an exhibit in the lobby of one of the local hotels without adverse effect.

(10) The Standard Industrial Classification Manual of the Bureau of Budget, U. S. Government, classifies as a service facility, tire repair shops which engage in repairing and retreading automotive tires. It is not covered under another major group listing the manufacture of rubber products.

(11) The Zoning Administrator whose function it is to interpret and enforce the zoning regulations has, after considerable study and investigation of the process of recapping tires, held since 1958 that such process is a service facility and not "rubber products manufacture or treatment". He has ruled that the term "treatment" as used in Section 6102.4 of the regulations refers to the chemical treatment of raw rubber in order to make it useful in the creation of a desired product and does not refer to every possible operation which might be performed on rubber or a rubber product. Thus he eliminates from the scope of the term "the treatment of rubber or rubber products" such normal manufacturing operations as shaping of rubber products and in the present case recapping of tires. The Zoning Administrator submitted a list of tire recapping facilities presently existing in the commercial districts.

(12) The Bureau of Internal Revenue does not require the payment of excise taxes by one engaged in the tire recapping business. Excise taxes are required to be paid by all manufacturers.

(13) The appellants presented testimony tending to show that the C-M-2 District, in which the Safety Tire Company proposes to locate, is primarily a Residential District, and therefore, tire recapping facilities or any like use should not be permitted. This testimony is not supported by the facts nor relevant to the subject inquiry and therefore will not be considered as facts in this case.

**OPINION:**

Upon careful review of the evidence, it is our conclusion that tire recapping is a service activity which does not constitute the manufacture of rubber or

rubber products, nor the treatment of rubber or of rubber products. No raw rubber, or other raw materials necessary for the creation of synthetic rubber are used in the process and no new product is created. In the final analysis the recapped tire constitutes a repair.

We believe it significant that tire recapping has been considered a C-2 service-type operation since 1958, that those charged with the enforcement of the Zoning Regulations have uniformly construed such regulations as not prohibiting tire recapping in most of the C Districts,\* and that numerous permits have been issued by the city for such purpose. We believe it to be a general rule of statutory construction that in any doubtful case great weight should be given to contemporaneous construction of regulations by the officials charged with their enforcement. This is particularly true where the administrative construction has been accompanied over a period of years by the silent acquiescence of the legislative body.

It must also be remembered that the Zoning Regulations are in derogation of the common law right of an owner to use private property so as to realize its highest utility. Such regulation must be strictly construed in favor of the property owner and should not be extended by implication to cases not clearly within their scope and purpose. We therefore hold that the ruling of the Zoning Administrator is in accordance with the intent and purpose of the regulations and with established precedent.

\* (C or Commercial Districts as distinguished from C-M or commercial manufacturing districts.)

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